

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOHN LIVZEY,

Plaintiff,

- against -

THE NEW YORK OBSERVER, LLC

Defendant.

Docket No. 1:17-cv-8284

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff John Livzey (“Livzey” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant The New York Observer, LLC (“Observer” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of American musician Frank Zappa, owned and registered by Livzey, a legendary Los Angeles based music photographer. Accordingly, Livzey seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are transacting business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Livzey is a professional rock and roll photographer whose career has spanned over forty-five years photographing many legendary musicians including George Harrison, Eddie Van Halen, Frank Zappa, and Steve Vai. Livzey is in the business of selling and licensing his photographs to online and print media for a fee, having a usual place of business at 92 Grace Terrace, Pasadena, California 91105.

6. Upon information and belief, Observer is a domestic limited liability company duly organized and existing under the laws of the State of New York, with a place of business at 1 Whitehall Street, 7<sup>th</sup> Floor, New York, New York 10004. At all times material hereto, Observer has owned and operated the website and the URL: [www.Observer.com](http://www.Observer.com) (the “Website”).

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photograph**

7. Livzey photographed American musician Frank Zappa (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Livzey is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph has a pending United States Copyright Office application number of 1-5898264907

#### **B. Defendant Infringing Activities**

10. Upon information and belief, on or about June 24, 2016 Observer ran an article on the Website entitled 'Eat That Question': Frank Zappa's Greatest Quotes. See <http://observer.com/2016/06/eat-that-question-frank-zappas-greatest-quotes/>. A true and correct copy of the article is attached hereto as Exhibit B.

11. Defendant did not license the Photograph from Plaintiff for its Website, nor did Defendant have Plaintiff's permission or consent to publish the Photograph on its Website.

**FIRST CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST OBSERVER)**  
**(17 U.S.C. §§ 106, 501)**

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

13. Defendant infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Defendant is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant profits pursuant to 17 U.S.C. § 504(b) for the infringement.

**SECOND CLAIM FOR RELIEF**  
**INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST**  
**OBSERVER**  
**(17 U.S.C. § 1202)**

17. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-16 above.

18. When the Photograph was first published it contained copyright management information protected under 17 U.S.C. § 1202(b).

19. Upon information and belief, intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

20. The conduct of Observer violates 17 U.S.C. § 1202(b).

21. Observer's removal of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

22. Upon information and belief, the removal of said copyright management information was made by Observer intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph. Observer also knew, or should have known, that such removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph.

23. As a result of the wrongful conduct of Observer as alleged herein, Plaintiff is entitled to recover from Observer the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Observer because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

24. Alternatively, Plaintiff may elect to recover from Observer statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Observer be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant profits, gains or advantages of any kind attributable to Defendant infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:  
a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;

6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
October 26, 2017

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz  
Richard P. Liebowitz  
11 Sunrise Plaza, Suite 305  
Valley Stream, NY 11580  
Tel: (516) 233-1660  
RL@LiebowitzLawFirm.com

*Attorneys for Plaintiff John Livzey*